



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 09-01208

Applicant for Security Clearance

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel

For Applicant: *Pro se*

June 17, 2010

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant admitted to 14 delinquent debts totaling \$10,539, three of which are for less than \$100. He has a history of not paying his legal obligations. He presented no documentary evidence of good-faith efforts to pay, settle, or resolve his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 24, 2009, Applicant submitted a security clearance application. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations). It detailed reasons why DOHA could not make the preliminary

affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant's response to the SOR allegations (undated) was received by DOHA on September 18, 2009. He elected to have his case decided on the written record in lieu of a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated October 16, 2009, was provided to him by letter dated August 19, 2009. Applicant signed the receipt for the DOHA transmittal letter on October 28, 2009. He was given 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on February 4, 2010.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.g-1.i, 1.k, 1.l, 1.o, 1.s, 1.t, 1.v, and 1.aa-1.dd. He denied the allegations in SOR ¶¶ 1.b, 1.e, 1.f, 1.j, 1.m, 1.n, 1.p-1.r, 1.u, 1.w-1.z, and 1.ee. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's answers to the SOR, I make the following additional findings of fact.

Applicant is a 37-year-old associate cable fabricator employed by a defense contractor. He served in the U.S. Marine Corps from November 1996 until June 1998, and was honorably discharged (FORM Item 5). He is receiving disability benefits from the Veterans Administration (VA) (Item 6). He has attended college since 2004, and received his associate's degree in August 2006. He married his first wife in 1996 and they were divorced in 2000. He married his second wife in October 2006. As of his November 2008 interview, he was separated from his second wife. He has two children, ages 11 and 8.

Applicant's security clearance application indicates he was employed part-time as an installation technician from June 1998 until February 2007. He was unemployed from February 2007 until March 2008. He has been employed since March 2008. He was hired by his current employer, a government contractor, in July 2008.

Applicant disclosed in his September 2008 security clearance application that he had financial problems. In November 2008, Applicant was interviewed about his numerous delinquent accounts. During the interview, Applicant stated he had been struggling financially due to his unemployment. He claimed his financial problems were not due to use of drugs, alcohol, gambling, or any criminal activity. He stated that he lives well below his means, has eliminated any unnecessary expenses, and is attempting to follow a budget. He intends to pay his delinquent debts and to repair his credit when he is financially able to do so. (Item 6).

In May 2009, Applicant answered DOHA's detailed financial interrogatories concerning most of the debts alleged in the SOR. (Item 7) In his response, Applicant stated he was disputing the debt alleged in SOR ¶¶ 1.q; he did not recognize the

creditors of SOR ¶¶ 1.b, 1.e, 1.f, 1.r, 1.u, 1.w, 1.x, 1.y, 1.z, and 1.ee; and he was requesting information on the accounts listed in SOR ¶¶ 1.j and 1.p. He also claimed he would settle and pay some debts within a certain time, and that he was in settlement negotiations with other creditors. Applicant presented no documentary evidence of good-faith efforts to dispute, pay, settle, or otherwise resolve any of his delinquent debts. Applicant's admissions to the SOR and both credit reports establish that the SOR debts are Applicant's unresolved debts.

Applicant's May 2009 personal financial statement indicates his net monthly salary is \$2,117, including a \$117 VA disability payment. He listed \$1,280 monthly expenses, including \$150 in child support. His monthly net remainder is approximately \$800. Applicant's personal financial statement listed no scheduled or actual payments on any debts. He stated that the interrogatories contained all his financial obligations, and that he was waiting for information to address the debts. Applicant presented no evidence of any financial counseling or remorse for his financial situation.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. They provide explanations for each guideline and list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's goal is to achieve a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence."<sup>1</sup> Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts

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<sup>1</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government.<sup>2</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The SOR alleges 31 delinquent debts totaling approximately \$18,000. Applicant admitted to 14 delinquent debts totaling \$10,539, three of which are for less than \$100. His history of financial problems dates back ten years. Since 2000, he has been repeatedly delinquent in paying his legal obligations. Applicant presented no documentary evidence of good-faith efforts to pay, settle, or resolve his delinquent debts. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

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<sup>2</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

The record shows some circumstances beyond his control, which could have contributed to his inability to pay his debts, i.e., his divorce, separation from his current wife, and his period of unemployment. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's scant evidence is not sufficient to show he acted responsibly under the circumstances. In light of his approximately \$800 net remainder after paying his day-to-day living expenses, he failed to explain why he has not responsibly addressed his delinquent debts.

Applicant presented no documentary evidence of good-faith efforts to pay, settle, or resolve his delinquent debts since the day he acquired them. None of the mitigating circumstances apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served two years in the Marine Corps, and receives a VA disability payment. He has worked for a government contractor since 2008. He is a mature man and a good worker. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond his control, which contributed to his inability to pay his debts.

Notwithstanding, Applicant's scant evidence is not sufficient to show he acted responsibly under the circumstances. He failed to resolve even relatively small delinquent obligations. He presented no documentary evidence of debt payments, contacts with creditors, or negotiations of debts. There is no evidence that his financial problems are resolved or under control. His favorable information fails to show financial responsibility and good judgment.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.ee:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge